

UNITED STATES PATENT AND TRADEMARK OFFICE



UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	F	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,988	05/04/2001		Christina Bauer-Plank	F7534(V)	8753
201	7590	05/29/2002			
UNILEVER	IILEVER			EXAMINER	
PATENT DEPARTMENT 45 RIVER ROAD				PADEN, CA	AROLYN A
EDGEWATER, NJ 07020			ART UNIT	PAPER NUMBER	
				1761	6
				DATE MAILED: 05/29/2002	~

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)			
	09/848,988	BAUER-PLANK ET AL.			
Office Action Summary	Examiner	Art Unit			
	Carolyn A. Paden	1761			
The MAILING DATE of this communication ap Period for Reply	pears on the cover sheet with the o	correspondence address			
A SHORTENED STATUTORY PERIOD FOR REPL THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1. after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a replif NO period for reply is specified above, the maximum statutory period. - Failure to reply within the set or extended period for reply will, by statut. - Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b). Status	.136(a). In no event, however, may a reply be timely within the statutory minimum of thirty (30) day I will apply and will expire SIX (6) MONTHS from the cause the application to become ABANDONE	nely filed /s will be considered timely. It the mailing date of this communication. ED (35 U.S.C. § 133).			
1) Responsive to communication(s) filed on 18	October 2001				
2a) ☐ This action is FINAL . 2b) ☑ T	his action is non-final.				
3) Since this application is in condition for allow closed in accordance with the practice unde	vance except for formal matters, p r <i>Ex parte Quayle</i> , 1935 C.D. 11,	rosecution as to the merits is 453 O.G. 213.			
Disposition of Claims	nn				
	4) Claim(s) 1-14 is/are pending in the application.				
4a) Of the above claim(s) is/are withdrawn from consideration.					
5) Claim(s) is/are allowed.					
6)⊠ Claim(s) <u>1-14</u> is/are rejected.					
7) Claim(s) is/are objected to.	as alsotion requirement				
8) Claim(s) are subject to restriction and/ Application Papers	or election requirement.				
9) The specification is objected to by the Examin					
10) The drawing(s) filed on is/are: a) acc					
Applicant may not request that any objection to t					
11)☐ The proposed drawing correction filed on		oved by the Examiner.			
If approved, corrected drawings are required in re					
12)☐ The oath or declaration is objected to by the E	xaminer.				
Priority under 35 U.S.C. §§ 119 and 120					
13) ☑ Acknowledgment is made of a claim for forei	gn priority under 35 U.S.C. § 119(a	a)-(d) or (f).			
a)⊠ All b) Some * c) None of:					
1. Certified copies of the priority documer	nts have been received.				
2. Certified copies of the priority documer	nts have been received in Applicat	ion No			
 3. Copies of the certified copies of the pri- application from the International B * See the attached detailed Office action for a lis 	ureau (PCT Rule 17.2(a)).				
14) Acknowledgment is made of a claim for domes	tic priority under 35 U.S.C. § 119	e) (to a provisional application).			
 a) The translation of the foreign language process. 15) Acknowledgment is made of a claim for domest 					
Attachment(s)					
 Notice of References Cited (PTO-892) Notice of Draftsperson's Patent Drawing Review (PTO-948) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 	5) Notice of Informal	y (PTO-413) Paper No(s) Patent Application (PTO-152)			
S. Patent and Trademark Office					

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3-6 and 11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Asahi (JP 7,087,889).

Asahi discloses a plastic oil in water emulsion containing fat and oils and an emulsions (including citric acid monoglyceride. Although the composition is not described as a pourable composition, one would have anticipated this feature to be inherent to a heated emulsion composition. The composition is not described as a frying composition but the intended use of the product does not alone constitute a patentably distinct product. Although the chain length of the fatty acids esterified to the mono-glyceride is not described, one of ordinary skill in the art would have anticipated this range because the chain length is typical to what is normally found in neutral fats.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Application/Control Number: 09/848,988

Art Unit: 1761

It is unclear in claim 9 as to whether the intermediate phase is included or excluded from the process. An amendment to the claims clarifying this issue would overcome the rejection.

Claims 9 and 10 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The intermediate phase in the claims is not in the specification.

Claims 9 and 10 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The intermediate phase in the claims is not adequately described in the specification. Examiner cannot find any mention of the intermediate phase in the specification.

The use of the trademarks in claim 13 has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claims 1, 3-6, 11 and 13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gunsted (RD239018).

Madsen discloses frying margarine with a low salt content that has anti-spattering properties and contains citric acid ester. The pourable aspect of the product would be anticipated at elevated temperatures. The chain length of the citric acid mono-ester would be expected to

Application/Control Number: 09/848,988

Art Unit: 1761

fall within the range of the claims because that range is typical for natural fatty acids. The tradenames used for the citric acid ester do not alter the chemical composition of the compound.

Claims 1, 6-8 and 11-14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Madsen (RD 28364).

Madsen discloses using mono-glycerides as the fat source in a fat spread. The composition contains citric acid ester of monoglyceride at a level of 0.6% and 1.5%. The pH of the water phase is 4.7 and salt is used at the 1% level. The fatty acid chain length of claim 11 would have been anticipated in Madsen because the range in the claims falls within the level utilized in natural products. The citric acid ester compound would not be expected to change with the use of compounds with different trademarks. The process of claim 14, where oil and water are prepared an mixed, is described in the document.

Claims 1-14 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-8 of copending Application No. 09/850,805. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: A fat along with a citric acid partial ester of a triglyceride.

Shortenings are commonly used in the frying of foods.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending

Application/Control Number: 09/848,988

Art Unit: 1761

application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A. Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7 am to 3:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310 or 703-872-9311 for after final responses.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

CAROLYN PADEN 5-24-02 PRIMARY EXAMINER GROUP 1300 1761